MOTION FILED

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No. 01-1269

IN THE

Supreme Court of the United States

CITY OF CUYAHOGA FALLS, *et al.*,

Petitioners,

v.

BUCKEYE COMMUNITY HOPE FOUNDATION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION OF AMERICAN PLANNING ASSOCIATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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American Planning Association ("*amicus*") hereby moves for leave to file a brief *amicus curiae* because: (1) it is late and (2) consent to file this *amicus curiae* brief has not been provided by the City of Cuyahoga Falls, Petitioners. A copy of the proposed brief is attached.

Amicus was unable to file this brief within the applicable time period due to the numerous consultations it had with other *amici* filing in their matter.

As more fully explained in the brief under "Interest of *Amicus Curiae*", *amicus* American Planning Association is a nonprofit organization that represents practicing planners, officials, and citizens involved in fair housing issues, among others. The American Planning Association wishes to concur with the argument advanced by Amici National Fair Housing Alliance and AARP in Part III of their brief concerning the disparate impact test.

Accordingly, the American Planning Association respectfully requests that the Court grant leave to file the attached brief *amicus curiae*.

Respectfully submitted,

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QUESTION PRESENTED

Amicus Curiae American Planning Association will briefly address the following question:

> In light of the constitutional freedom of political expression, can a disparate impact claim under the Fair Housing Act be maintained against a municipal corporation for the alleged impact of filing of a facially neutral and judicially upheld referendum petition?

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The American Planning Association (APA) is a nonprofit public interest and research organization founded in 1978 exclusively for charitable, educational, literary, and scientific research purposes to advance the art and science of planning — including physical, economic and social planning — at the local, regional, state, and national levels. The APA's mission is to encourage planning that will contribute to the public well-being by developing communities and environments that more effectively meet the present and future needs of people and society.

The APA resulted from a merger between the American Institute of Planners, founded in 1917, and the American Society of Planning Officials, established in 1934. The organization has 46 regional chapters and 17 divisions devoted to specialized planning interests, including the Housing and Human Services Division. The APA represents more than 30,000 practicing planners, officials, and citizens involved with urban and rural planning issues. These members are involved, on a day-to-day basis, in formulating and implementing planning policies and land-use regulations.

The APA has filed amici briefs in a number of very important fair housing and referendum cases, including *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976) and *City of Edmonds v. Oxford House, Inc.*, 115 S. Ct. 1776 (1995).

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1. Counsel for the *Amicus* were the sole authors of this brief. No person or entity other than *Amicus* made a financial contribution to this brief.

As the need arises, the APA develops policies that represent the collective thinking of its membership, and represents a collective view on both positions of principle and practice. Such policies are developed through a strenuous process that involves examination and review by both the chapters and the divisions of APA. In recent years, a number of policies have been adopted that highlight APA's concerns about fair housing and social equity issues. Several of these policies are included here to stress the importance of the disparate impact argument with which APA joins.

ARGUMENT

Amicus APA has filed this brief to indicate its agreement with Part III of the brief filed by Amici National Fair Housing Alliance and AARP. In that part of their brief, they argue that the Court should interpret Title VIII of the Fair Housing Act of 1968 to require only proof of disparate impact, not disparate intent, in order to prove a claim of racial discrimination. The APA joins in this argument and believes, as does the Amici National FHA and AARP, that it represents a correct interpretation of Congressional intent in the enactment of this legislation.

Racial discrimination is not just a matter of intent or what public officials believe. The wrong of racial discrimination is the restrictive effect it has on the opportunities for racial minorities to find and secure housing. The APA, in its adopted policies, has clearly stated that racial discrimination in the marketplace for housing is not to be tolerated.

The following policies were adopted by the APA Board of Directors in April, 1999:

> *General Policy Position #4 — Planners should help to eliminate housing discrimination in their communities.*
>
> *General Policy Position #5 — Planners should work to minimize the economic stratification of cities by income level, segregating the poor into one district, the middle-class into another, and the rich into yet another. Although this has been federal policy for over twenty years, its implementation at the local level has been slow.*

Specific Fair Housing Policy:

> *(a) APA National and Chapters fully support the provisions of the Fair Housing Act, and are dedicated to providing education, training and outreach to enable planners and their communities to eradicate discriminatory housing practices; and*
>
> *(b) Planners should identify, document, and eliminate impediments to fair housing contained within comprehensive plans and/or zoning regulations, including, but not limited to, special use permits for group homes, large lot zoning when used for the purposes of exclusion, and restrictive single family definitions. In accordance with the as-of-right principle, community residences must be designed and operated to exert no or minimal impact on adjacent properties.*

> *Such efforts should be performed in a manner consistent with federal requirements for fair housing performance standards.*

Most recently, the Board of Directors adopted a policy guide on smart growth in April 2002 which emphasizes the importance of addressing racial and social equity concerns in the community planning process.

> *The American Planning Association and its Chapters support increased social, economic, and racial equity in our communities. . . .*

Clearly, these policies require an inquiry into racially discriminatory zoning actions, and the effect they have on the housing market, as Congress intended. This case is an opportunity to interpret the Fair Housing Act, as applied to the zoning process, so that the Congressional objective to achieve equal housing opportunities for all Americans will be realized.

Respectfully submitted,

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